

1 THE HONORABLE JAMES L. ROBART
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ADRIANNA KILLAM,

11 Plaintiff,

12 vs.

13 S. WESCOTT, INC.,

Defendant.

14 NO. 2:20-cv-00516-JLR

15 DEFENDANT'S ANSWER AND
16 AFFIRMATIVE DEFENSES TO
17 PLAINTIFF'S COMPLAINT FOR
18 DECLARATORY AND INJUNCTIVE
19 RELIEF

20 Defendant S. Wescott, Inc. ("Defendant") respectfully submits its answer, defenses, and
21 affirmative defenses in response to the Plaintiff's Complaint for Declaratory and Injunctive Relief
22 ("Complaint"), as follows:

23 **I. ANSWERS TO PLAINTIFF'S CLAIMS**

24 1. Paragraph 1. The allegations contained in Paragraph 1 of the Complaint are
25 incomplete statements of law to which no response is required. In an abundance of caution, and
26 to the extent a response is required, Defendant denies the allegations contained therein.

1. Paragraph 2. The allegations contained in Paragraph 2 of the Complaint are
incomplete statements of law to which no response is required. In an abundance of caution, and
to the extent a response is required, Defendant denies the allegations contained therein.

3. Paragraph 3. The allegations contained in Paragraph 3 of the Complaint are
incomplete statements of law to which no response is required. In an abundance of caution, and

DEFENDANT'S ANSWER & AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT FOR DECLARATORY &
INJUNCTIVE RELIEF - 1
(Case No. 2:20-CV-00516-JLR)

17539-2/NAD/928520.1



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1 to the extent a response is required, Defendant denies the allegations contained therein.

2 4. Paragraph 4. Defendant denies the allegations contained in Paragraph 4 of the
3 Complaint.

4 5. Paragraph 5. Defendant is without sufficient knowledge or belief to admit or deny
5 the allegations contained in Paragraph 5 of the Complaint and, therefore, Defendant denies the
6 allegations on that basis.

7 6. Paragraph 6. Defendant is without sufficient knowledge or belief to admit or deny
8 the allegations contained in Paragraph 6 of the Complaint and, therefore, Defendant denies the
9 allegations on that basis.

10 7. Paragraph 7. Defendant admits the allegations contained in Paragraph 7 of the
11 Complaint.

12 8. Paragraph 8. Paragraph 8 of Plaintiff's Complaint is a statement of Plaintiff's legal
13 position to which no response is required. Defendant does not dispute subject matter jurisdiction.

14 9. Paragraph 9. Paragraph 9 of Plaintiff's Complaint is a statement of Plaintiff's legal
15 position to which no response is required. Defendant does not dispute subject matter jurisdiction.

16 10. Paragraph 10. Paragraph 10 of Plaintiff's Complaint is a statement of Plaintiff's
17 legal position to which no response is required. Defendant does not dispute that federal courts
18 may exercise supplemental jurisdiction over state law claims.

19 11. Paragraph 11. Paragraph 11 of Plaintiff's Complaint is a statement of Plaintiff's
20 legal position to which no response is required. Defendant does not dispute venue.

21 12. Paragraph 12. The allegations contained in Paragraph 12 of Plaintiff's complaint
22 contain statements of law and/or legal conclusions to which no response is required. In an
23 abundance of caution, and to the extent a response is required, Defendant denies the allegations
24 contained therein.

25 13. Paragraph 13. Defendant denies the allegations contained in Paragraph 13 of
26

1 Plaintiff's Complaint.

2 14. Paragraph 14. The allegations contained in Paragraph 14 of Plaintiff's Complaint
3 are statements of law and/or legal conclusions to which no response is required. Defendant further
4 responds that the Americans with Disabilities Act (ADA) speaks for itself. To the extent a
5 response is required, Defendant denies the allegations contained in Paragraph 14 of the Complaint.

6 15. Paragraph 15. The allegations contained in Paragraph 15 of Plaintiff's Complaint
7 are statements of law and/or legal conclusions to which no response is required. Defendant further
8 responds that the Americans with Disabilities Act (ADA) speaks for itself. To the extent a
9 response is required, Defendant admits that the quoted language appears within the ADA but
10 denies the allegations provide the relevant parts of the ADA.

11 16. Paragraph 16. Defendant is without sufficient knowledge or belief to admit or deny
12 the allegations contained in Paragraph 16 of the Complaint and, therefore, Defendant denies the
13 allegations on that basis.

14 17. Paragraph 17. Defendant is without sufficient knowledge or belief to admit or deny
15 the allegations contained in Paragraph 17 of the Complaint and, therefore, Defendant denies the
16 allegations on that basis.

17 18. Paragraph 18. Defendant is without sufficient knowledge or belief to admit or deny
18 the allegations contained in Paragraph 18 of the Complaint and, therefore, Defendant denies the
19 allegations on that basis.

20 19. Paragraph 19. Defendant is without sufficient knowledge or belief to admit or deny
21 the allegations contained in Paragraph 19 of the Complaint and, therefore, Defendant denies the
22 allegations on that basis.

23 20. Paragraph 20. The allegations contained in Paragraph 20 of Plaintiff's Complaint
24 are legal conclusions and/or a statement of Plaintiff's legal position for which no response is
25 required. To the extent an answer is necessary, Defendant denies the allegations contained in
26

1 Paragraph 20 of the Complaint.

2 21. Paragraph 21. Defendant admits the allegations contained in Paragraph 21 of
3 Plaintiff's Complaint.

4 22. Paragraph 22. The allegations contained in Paragraph 22 of Plaintiff's Complaint
5 are statements of law and/or legal conclusions to which no response is required. Defendant further
6 responds that the Americans with Disabilities Act (ADA) and its corresponding regulations and
7 building standards speak for themselves. To the extent a response is required, Defendant denies
8 the allegations contained in Paragraph 22 of the Complaint.

9 23. Paragraph 23. The allegations contained in Paragraph 23 of Plaintiff's Complaint
10 are statements of law and/or legal conclusions to which no response is required. Defendant further
11 responds that the Americans with Disabilities Act (ADA) and its corresponding regulations and
12 building standards speak for themselves. To the extent a response is required, Defendant denies
13 the allegations contained in Paragraph 23 of the Complaint.

14 24. Paragraph 24. The allegations contained in Paragraph 24 of Plaintiff's Complaint
15 are statements of law and/or legal conclusions to which no response is required. Defendant further
16 responds that the Americans with Disabilities Act (ADA) and its corresponding regulations and
17 building standards speak for themselves. To the extent a response is required, Defendant denies
18 the allegations contained in Paragraph 24 of the Complaint.

19 25. Paragraph 25. The allegations contained in Paragraph 25 of Plaintiff's Complaint
20 are statements of law and/or legal conclusions to which no response is required. Defendant further
21 responds that the Americans with Disabilities Act (ADA) and its corresponding regulations and
22 building standards speak for themselves. To the extent a response is required, Defendant denies
23 the allegations contained in Paragraph 25 of the Complaint.

24 26. Paragraph 26. The allegations contained in Paragraph 26 of Plaintiff's Complaint
25 are statements of law and/or legal conclusions to which no response is required. Defendant further
26

1 responds that the Americans with Disabilities Act (ADA) and its corresponding regulations and
 2 building standards speak for themselves. To the extent a response is required, Defendant denies
 3 the allegations contained in Paragraph 26 of the Complaint.

4 27. Paragraph 27. The allegations contained in Paragraph 27 of Plaintiff's Complaint
 5 are statements of law and/or legal conclusions to which no response is required. Defendant further
 6 responds that the Americans with Disabilities Act (ADA) and its corresponding regulations and
 7 building standards speak for themselves. To the extent a response is required, Defendant denies
 8 the allegations contained in Paragraph 27 of the Complaint.

9 28. Paragraph 28. Defendant admits that Plaintiff contacted Defendant by sending a
 10 letter on or about March 20, 2020, the contents of which speak for itself but which purport to be
 11 an attempt under Fed. R. Evidence 408 to resolve concerns. Defendant denies that as of the date
 12 of that letter "zero" accessible parking spots existed on the Property and denies the balance of the
 13 allegations in Paragraph 28.

14 29. Paragraph 29. Defendant admits there is an installed handy cap accessible parking
 15 stall and access aisle. Defendant deny any allegation that this is a "new" spot that exceeds currently
 16 applicable ADA standards, as the parking stall has existed since at least 1980. Defendant further
 17 denies the allegation that there is no parking sign located on the Property. The remaining
 18 allegations contained in Paragraph 29 of Plaintiff's Complaint contain legal conclusions for which
 19 no response is required. To the extent a response is required, Defendant denies the remainder of
 20 the allegations contained in Paragraph 29 of the Complaint. Defendant specifically denies any
 21 allegation or inference that its property does not conform with applicable obligations under the
 22 ADA.

23 30. Paragraph 30. Defendant admits that it has a curb ramp on its property, which has
 24 existed since at least 1980. The balance of the Paragraph 30 of the Complaint contain legal
 25 conclusions for which no response is required. To the extent a response is required, Defendant

1 denies the remainder of the allegations contained in Paragraph 30 of the Complaint. Defendant
2 specifically denies any allegation or inference that its property does not conform with applicable
3 obligations under the ADA.

4 31. Paragraph 31. Defendant is without sufficient knowledge or belief to admit or deny
5 the allegations contained in Paragraph 31 of the Complaint and, therefore, Defendant denies the
6 same on that basis.

7 32. Paragraph 32. Defendant denies the allegation that the property is not safe and is
8 not welcoming for people who use wheelchairs. Defendant responds that the remaining allegations
9 contained in Paragraph 32 of Plaintiff's Complaint contains legal conclusions for which no
10 response is required. To the extent an answer is necessary, Defendant denies the allegations
11 contained in Paragraph 32 of the Complaint. Defendant specifically denies any allegation or
12 inference that its property does not conform with applicable obligations under the ADA.

13 33. Paragraph 33. Defendant denies that there has been any alleged failure to make
14 property comply with applicable ADA laws and regulations, and denies that people with
15 disabilities are being denied equal access and enjoyment to the Property. Defendant further
16 responds that balance of the allegations contained in Paragraph 33 of Plaintiff's Complaint
17 contains legal conclusions for which no response is required. To the extent an answer is necessary,
18 Defendant denies the allegations contained in Paragraph 33 of the Complaint. Defendant
19 specifically denies any allegation or inference that its property does not conform with applicable
20 obligations under the ADA.

21 34. Paragraph 34. Defendant incorporates by reference and realleges its answers to the
22 allegations contained in Paragraphs 1 through 33 of Plaintiff's Complaint.

23 35. Paragraph 35. Defendant is without sufficient knowledge or belief to admit or deny
24 the allegations contained in Paragraph 35 of the Complaint and, therefore, Defendant denies the
25 same on that basis. The allegations also contain legal conclusions for which no response is
26

1 required. To the extent an answer were required, those allegations are denied.

2 36. Paragraph 36. The allegations contained in Paragraph 36 of Plaintiff's Complaint
3 are duplicative of the allegations contained within Paragraph 15. The allegations contain
4 statements of law and/or legal conclusions to which no response is required. Defendant further
5 responds that the Americans with Disabilities Act (ADA) speaks for itself. To the extent a
6 response is required, Defendant admits that the quoted language appears within the ADA but
7 denies the allegations provide the relevant parts of the ADA.

8 37. Paragraph 37. Defendant admits that Defendant S. Wescott, Inc. owns the Property
9 that and that the Property includes a parking lot that services a Domino's pizza restaurant.

10 38. Paragraph 38. The allegations contained in Paragraph 38 of the Complaint contain
11 legal conclusions for which no response is required.

12 39. Paragraph 39. Defendant responds that the allegations contained in Paragraph 39
13 of Plaintiff's Complaint contain legal conclusions for which no response is required. To the extent
14 an answer is necessary, Defendant denies the allegations contained in Paragraph 39 of the
15 Complaint.

16 40. Paragraph 40. Defendant responds that the allegations contained in Paragraph 40
17 of Plaintiff's Complaint contain legal conclusions for which no response is required. To the extent
18 an answer is necessary, Defendant denies the allegations contained in Paragraph 40 of the
19 Complaint and denies that it has engaged in any discriminatory conduct toward Plaintiff.

20 41. Paragraph 41. Defendant responds that the allegations contained in Paragraph 41
21 of Plaintiff's Complaint contain legal conclusions for which no response is required. To the extent
22 an answer is necessary, Defendant denies the allegations contained in Paragraph 41 of the
23 Complaint and denies that it has discriminated or will continue to discriminate against Plaintiff on
24 the basis of disability.

25 42. Paragraph 42. Defendant denies the allegations contained in Paragraph 42 of

1 Plaintiff's Complaint.

2 43. Paragraph 43. Defendant responds that the allegations contained in Paragraph 43
3 of Plaintiff's Complaint contain legal conclusions for which no response is required. To the extent
4 an answer is necessary, Defendant denies the allegations contained in Paragraph 43 of the
5 Complaint and denies that it has engaged in discriminatory conduct toward Plaintiff and further
6 denies that Plaintiff is entitled to declaratory and injunctive relief.

7 44. Paragraph 44. Defendant responds that the allegations contained in Paragraph 44
8 of Plaintiff's Complaint contain legal conclusions for which no response is required. To the extent
9 an answer is necessary, Defendant denies the allegations contained in Paragraph 44 of the
10 Complaint and denies that it has engaged in discriminatory conduct toward Plaintiff and further
11 denies that it is liable for Plaintiff's attorney's fees and costs.

12 45. Paragraph 45. Defendant incorporates by reference and realleges its answers to the
13 allegations contained in Paragraphs 1 through 44 of Plaintiff's Complaint.

14 46. Paragraph 46. Defendant is without sufficient knowledge or belief to admit or deny
15 the allegations contained in Paragraph 46 of the Complaint and, therefore, Defendant denies the
16 same on that basis.

17 47. Paragraph 47. The allegations contained in Paragraph 47 of Plaintiff's Complaint
18 are statements of law to which no response is required. Defendant further responds that the
19 Washington Law Against Discrimination (WLAD) speaks for itself. To the extent a response is
20 required, Defendant admits that Paragraph 47 quotes language from 49.60 RCW, but denies the
21 allegations contained in Paragraph 47 of the Complaint to the extent such allegations purport to
22 rely on all of the pertinent language within the state statute.

23 48. Paragraph 48. The allegations contained in Paragraph 48 of Plaintiff's Complaint
24 are legal conclusions and/or a statement of Plaintiff's legal position to which no response is
25 required. To the extent a response is required, Defendant denies the allegations contained in
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1 Paragraph 48 of the Complaint.

2 49. Paragraph 49. The allegations contained in Paragraph 49 of Plaintiff's Complaint
3 are legal conclusions and/or a statement of Plaintiff's legal position to which no response is
4 required. To the extent a response is required, Defendant denies the allegations contained in
5 Paragraph 49 of the Complaint and denies that it has engaged in discriminatory conduct toward
6 Plaintiff.

7 50. Paragraph 50. The allegations contained in Paragraph 50 of Plaintiff's Complaint
8 are legal conclusions and/or a statement of Plaintiff's legal position to which no response is
9 required. To the extent a response is required, Defendant denies the allegations contained in
10 Paragraph 50 of the Complaint.

11 51. Paragraph 51. The allegations contained in Paragraph 51 of Plaintiff's Complaint
12 are legal conclusions and/or a statement of Plaintiff's legal position to which no response is
13 required. To the extent a response is required, Defendant denies the allegations contained in
14 Paragraph 51 of the Complaint.

15 52. Paragraph 52. The allegations contained in Paragraph 52 of Plaintiff's Complaint
16 are legal conclusions and/or a statement of Plaintiff's legal position to which no response is
17 required. To the extent a response is required, Defendant denies the allegations contained in
18 Paragraph 52 of the Complaint.

19 53. Paragraph 53. The allegations contained in Paragraph 53 of Plaintiff's Complaint
20 are legal conclusions and/or a statement of Plaintiff's legal position to which no response is
21 required. To the extent a response is required, Defendant denies the allegations contained in
22 Paragraph 53 of the Complaint.

23 54. Paragraph 54. Defendant denies the allegations contained in Paragraph 54 of
24 Plaintiff's Complaint.

25 55. Paragraph 55. Defendant responds that the allegations contained in Paragraph 55

1 of Plaintiff's Complaint contain legal conclusions for which no response is required. To the extent
 2 an answer is necessary, Defendant denies the allegations contained in Paragraph 55 of the
 3 Complaint and denies that it has engaged in discriminatory conduct toward Plaintiff and further
 4 denies that Plaintiff is entitled to declaratory and injunctive relief.

5 56. Paragraph 56. Defendant responds that the allegations contained in Paragraph 56
 6 of Plaintiff's Complaint contain legal conclusions for which no response is required. To the extent
 7 an answer is necessary, Defendant denies the allegations contained in Paragraph 56 of the
 8 Complaint and denies that it has engaged in discriminatory conduct toward Plaintiff and further
 9 denies that it is liable for Plaintiff's attorney's fees and costs.

10 **II. DEFENSES AND AFFIRMATIVE DEFENSES**

11 By way of further answer and without shifting the burden of proof at trial, Defendant
 12 submits the following defenses and affirmative defenses:

13 57. Failure to State a Claim. Plaintiff has failed to state a claim upon which relief may
 14 be granted.

15 58. No Standing. Plaintiff lacks standing to sue for alleged ADA violations pertaining
 16 to the property at issue in the Complaint.

17 59. Modifications not Required. The modifications sought by Plaintiff are not readily
 18 achievable, are technically infeasible, would result in an undue burden to Defendant and/or are
 19 otherwise not required by statute, namely 42 U.S.C. § 12182(b)(2)(A)(ii)-(iv). Regulations starting
 20 in 1990 require lots with 25 and less parking stalls to provide one "Van-Accessible" stall and
 21 access aisle that are 96" wide. The ADA stall located at the property since 1980 was and has
 22 always been 96" wide and the corresponding access aisle was and has always been 96" wide as
 23 well. Signage and striping has been installed and maintained at the property, with no re-striping
 24 or alterations to the parking lot since 1980. The stall, and access aisle, signage and striping have
 25 been and are currently conforming to existing ADA dimensions. To the extent that the slope and
 26

1 curb cut mildly deviate from new-installation requirements, it would require lowering the building,
 2 excavating and replacing the building sidewalk, and excavating and repaving the parking lot.
 3 These modifications are not “readily achievable,” not technically feasible, and would not be
 4 plausible. Instead, they would substantially and unduly burden Defendant to the point of having
 5 to tear down the existing building.

6. Permissible under Grandfather Provisions. Plaintiff’s claims are barred to the
 7 extent that the parking lot at issue was designed and constructed prior to the effective dates of the
 8 ADA, the WLAD, or any of their implementing regulations, and was not subsequently altered.
 9 One or more “safe harbors” under applicable law may also be applicable.

10. De Minimis Violations. Plaintiff’s claims are barred in whole or in part because
 11 the claimed violations are *de minimis* and are non-actionable technical violations that do not
 12 materially impair Plaintiff’s use of an area for an intended purpose.

13. Unclean Hands. Plaintiff’s claims should be barred in part or in whole by the
 14 equitable doctrine of unclean hands.

15. Vexatious Litigation. On information and belief, Plaintiff has filed numerous
 16 similar lawsuits against individual property owners and small business owners throughout Western
 17 Washington and, therefore, Plaintiff appears to be a serial ADA plaintiff who is aggressively and
 18 affirmatively trying to uncover technical violations against small business owners, including those
 19 whose established properties pre-date the ADA requirements relied upon in the Complaint and
 20 who have operated in good faith consistent with the safe harbor provisions of the ADA. To the
 21 extent Plaintiff is engaged in a pattern and practice of affirmatively seeking out technical ADA
 22 violations without regard to the safe harbor rights of owners, or without having a proper purpose
 23 under Fed. R. Civ. P. 11, or without having actually suffered the injury she alleges to have suffered
 24 as a result of the technical violations (or, whose only injury is the direct result of bad faith efforts
 25 to uncover supposed violations rather than the good-faith desire to frequent the targeted business
 26

1 as she alleges in the Complaint), the Court should decline to exercise its equitable and other
2 discretion to aid such vexatious litigation.

3 64. Mootness. To the extent Plaintiff's claims are based upon any alleged violation or
4 condition of the property that has since been remedied, Plaintiff's claims fail in whole or in part
5 under the doctrine of mootness.

6 65. No Damages/Failure to Mitigate. On information and belief, Plaintiff has not
7 suffered any damages as a result of Defendant's alleged technical violations or, alternatively,
8 Plaintiff has failed to mitigate any damages she has suffered.

9 66. Offset. Any alleged damages suffered by Plaintiff are entirely set off and exceeded
10 by the damages Plaintiff caused to Defendant.

11 67. Fault of Plaintiff/Third Parties. Plaintiff's alleged damages, if any, were caused by
12 Plaintiff's own acts or misconduct and/or the fault of third parties.

13 68. Good Faith/Justification. To the extent that Defendant engaged in any of the
14 alleged conduct, such conduct was justified, undertaken in good faith, and/or protected by a
15 privilege, including the safe harbor provision of the ADA.

16 69. Reservation of Rights. Defendant reserves its right to assert any other affirmative
17 or other defense to the Complaint, as appropriate.

III. REQUEST FOR RELIEF

19 WHEREFORE, having fully answered the Complaint, Defendant requests that the Court
20 grant the following relief:

- 21 A. For dismissal of Plaintiff's claims with prejudice;
22 B. For an award of Defendant's costs and attorney's fees incurred in defending this
23 action to the full extent permitted;
24 C. For leave to amend this answer freely; and
25 D. For such other and further relief as the Court deems just and proper.

**DEFENDANT'S ANSWER & AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT FOR DECLARATORY &
INJUNCTIVE RELIEF - 12**
(Case No. 2:20-CV-00516-JLR)



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1 DATED this 28th day of April, 2020.
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EISENHOWER CARLSON PLLC

4 /s/ Neil A. Dial
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DEFENDANT'S ANSWER & AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT FOR DECLARATORY &
INJUNCTIVE RELIEF - 13
(Case No. 2:20-CV-00516-JLR)

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1 CERTIFICATE OF SERVICE
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The undersigned certifies that, on April 28, 2020, the foregoing document was electronically filed with the Clerk of the Court using the Court's CM/ECF system which will send notification to all counsel of record.

5 DATED this 28th day of April, 2020.
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7 /s/ Neil A. Dial
8

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DEFENDANT'S ANSWER & AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT FOR DECLARATORY &
INJUNCTIVE RELIEF - 14

(Case No. 2:20-CV-00516-JLR)

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